

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROSS UNIVERSITY SCHOOL OF MEDICINE, LTD.,	:
	:
Plaintiff,	:
	:
- against -	: 09 Civ. 1410 (KAM) (RLM)
	:
BROOKLYN-QUEENS HEALTH CARE, INC. and	:
WYCKOFF HEIGHTS MEDICAL CENTER,	:
	:
Defendants.	:
-----X	:

**DECLARATION OF JUSTIN H. ROEBER IN SUPPORT OF
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, JUSTIN H. ROEBER, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a member of the Bar of this Court and an associate with the law firm of K&L Gates LLP, attorneys for Defendants Brooklyn-Queens Health Care, Inc. ("BQHC") and Wyckoff Heights Medical Center ("Wyckoff") (together "Defendants").
2. I submit this Declaration based on my personal knowledge in support of Defendants' motion for partial summary judgment dismissing two of the principal theories of liability alleged by Plaintiff Ross University School of Medicine, Ltd. ("Ross").
3. Attached hereto as Exhibit 1 is a true and accurate copy of a document Bates-labeled BQHC 00338-00429, which Defendants produced during discovery in this action (Wyckoff's January 1, 2007 Secretary's Certificate filed with the New York Department of State, incorporating (a) Wyckoff's corporate Bylaws and (b) its original September 18, 1889 certificate of incorporation and amendments thereto).

4. Attached hereto as Exhibit 2 is a true and accurate copy of the transcript from the deposition of John St. James, taken in this action on June 30, 2011.

5. Attached hereto as Exhibit 3 is a true and accurate copy of the transcript from the deposition of David N. Hoffman, Esq., taken in this action on June 1, 2011.

6. Attached hereto as Exhibit 4 is a true and accurate copy of a document Bates-labeled BQHC 00195-00198, which Defendants produced during discovery in this action (minutes from the March 6, 2008 meeting of BQHC's Board of Trustees).

7. Attached hereto as Exhibit 5 is a true and accurate copy a document Bates-labeled BQHC 00558-00663, which Defendants produced during discovery in this action (the May 9, 2006 Asset Purchase Agreement by and among Saint Vincent's Catholic Medical Centers of New York, CMC Occupational Health Services, P.C., CMC Physician Services, P.C., CMC Radiological Services, P.C., CMC Cardiology Services, P.C., Caritas Health Care Planning, Inc. ("Caritas"), and Wyckoff).

8. Attached hereto as Exhibit 6 is a true and accurate copy of a document available at the website <http://www.sjo.org/documents/Ethical%20and%20Religious%20Directives%20for%20Catholic%20Health%20Care%20Services.pdf> and downloaded on November 30, 2011 (the United States Conference of Catholic Bishops' Ethical and Religious Directives for Catholic Health Care Services (4th ed. 2001)).

9. Attached hereto as Exhibit 7 are true and accurate copies of news articles available through the website www.lexis.com and downloaded on November 28, 2011. The articles include:

- Mark Hayward, *Proposed CMC Deal Given Boost*, N.H. UNION LEADER, Dec. 12, 2009, at 01;

- Melanie Evans, *Faith Permeates Hospital Merger*; Miller-Dwan Strives to Prevent Catholic Influence From Limiting Patient Choices, DULUTH NEWS-TRIBUNE, Sept. 7, 2001, at 01A;
- Roni Rabin, *Takeover Deal for 2 Hospitals*, NEWSDAY, Feb. 4, 1998, at A30;
- Julie Sneider, *Mixing Catholic, Secular Hospitals a Delicate Balancing Act*, BUSINESS JOURNAL-MILWAUKEE, July 9, 1994, at 1;
- Bruce Japsen, *Church Puts Faith in System Mergers in Light of Healthcare Reforms, Catholic Hospitals Face the Challenge of Non-Catholic Collaborations*, MODERN HEALTHCARE, June 6, 1994, at 32; and
- John George, *Two Montco Hospitals Form Partnership to Mesh Services*, PHILADELPHIA BUS. J., Sept. 7, 1992, at 6.

10. Attached hereto as Exhibit 8 is a true and accurate copy of a document Bates-labeled BQHC 00518-00538, which Defendants produced during discovery in this action (Caritas's Certificate of Incorporation and corresponding Certificate of Amendment).

11. Attached hereto as Exhibit 9 is a true and accurate copy of a document Bates-labeled BQHC 03782-03795, which Defendants produced during discovery in this action (minutes from the December 14, 2006 meeting of Wyckoff's Board of Trustees).

12. Attached hereto as Exhibit 10 is a true and accurate copy of a document Bates-labeled BQHC 01829-01851, which Defendants produced during discovery in this action (the corporate Bylaws of Caritas Health Care, Inc.).

13. Attached hereto as Exhibit 11 is a true and accurate copy of a document Bates-labeled BQHC 00458-00473, which Defendants produced during discovery in this action (BQHC's Certificate of Incorporation and corresponding Certificate of Amendment).

14. Attached hereto as Exhibit 12 is a true and accurate copy of a document Bates-labeled BQHC 00440-00457, which Defendants produced during discovery in this action (BQHC's corporate Bylaws).

15. Attached hereto as Exhibit 13 is a true and accurate copy of the transcript from the deposition of Paul Goldberg, taken in this action on July 6, 2011.

16. Attached hereto as Exhibit 14 is a true and accurate copy of a document Bates-labeled BQHC 00791-00792, which Defendants produced during discovery in this action (Schedule 5.3(a) (“Seller Consents”) to the May 9, 2006 Asset Purchase Agreement by and among Saint Vincent’s Catholic Medical Centers of New York, CMC Occupational Health Services, P.C., CMC Physician Services, P.C., CMC Radiological Services, P.C., CMC Cardiology Services, P.C., Caritas, and Wyckoff).

17. Attached hereto as Exhibit 15 is a true and accurate copy of a document Bates-labeled BQHC 00881, which Defendants produced during discovery in this action (Schedule 10.3(d) (“Required Governmental Consents”) to the May 9, 2006 Asset Purchase Agreement by and among Saint Vincent’s Catholic Medical Centers of New York, CMC Occupational Health Services, P.C., CMC Physician Services, P.C., CMC Radiological Services, P.C., CMC Cardiology Services, P.C., Caritas, and Wyckoff).

18. Attached hereto as Exhibit 16 is a true and accurate copy of a document Bates-labeled BQHC 00535, which Defendants produced during discovery in this action (December 21, 2006 DOH letter announcing its approval of Caritas to operate St. John’s and Mary Immaculate).

19. Attached hereto as Exhibit 17 is a true and accurate copy of a document Bates-labeled BQHC 00512-00517, which Defendants produced during discovery in this action (the title page and table of contents to the “Closing Documents” attached to the “Acquisition of Assets of Mary Immaculate Hospital and St. John’s Queens Hospital by Caritas Health Care, Inc.,” dated January 1, 2007).

20. Attached hereto as Exhibit 18 is a true and accurate copy of the Second Amended Complaint in this action, which Ross filed on or about September 22, 2009.

21. Attached hereto as Exhibit 19 is a true and accurate copy of excerpts of a document available through the website <http://www.sec.gov/edgar.shtml> and downloaded on November 9, 2011 (the Form 10-K filed with the SEC by DeVry University for the fiscal year ending June 30, 2011).

22. Attached hereto as Exhibit 20 is a true and accurate copy of a document Bates-labeled Ross 038243-038279, which Plaintiff produced during discovery in this action ("Ross University School of Medicine: Affiliated Clinical Training Sites," updated August 2011).

23. Attached hereto as Exhibit 21 is a true and accurate copy of a document Bates-labeled Ross 032636-032640, which Plaintiff produced during discovery in this action (Agreement, dated February 2, 1998, between Ross and Catholic Medical Center of Brooklyn and Queens, Inc. ("St. Vincent's") for clinical clerkships for Ross students at St. John's Queens and Mary Immaculate hospitals).

24. Attached hereto as Exhibit 22 is a true and accurate copy of a document Bates-labeled Ross 032641-032642, which Plaintiff produced during discovery in this action (Addendum to the February 2, 1998 Agreement between Ross University and St. Vincent's for clinical clerkships for Ross students at St. John's Queens and Mary Immaculate hospitals).

25. Attached hereto as Exhibit 23 is a true and accurate copy of the transcript from the deposition of Julius Romero, taken in this action on July 1, 2011.

26. Attached hereto as Exhibit 24 is a true and accurate copy of a document Bates-labeled Ross 033055-033056, which Plaintiff produced during discovery in this action and which was marked as Exhibit 17 at the July 1, 2011 deposition of Julius Romero (e-mail, dated December 16, 2006, from Julius Romero to John St. James regarding potential "Affiliation Agreement" for Ross's medical students to have clerkships at Caritas's hospitals).

27. Attached hereto as Exhibit 25 is a true and accurate copy of the transcript from the deposition of Harold McDonald, taken in this action on June 27, 2011.

28. Attached hereto as Exhibit 26 is a true and accurate copy of a document Bates-labeled Ross 023753, which Plaintiff produced during discovery in this action (a November 7, 2006 chain of emails between Julius Romero and Dr. Nancy Perri regarding an initial proposal for clinical clerkships at Caritas).

29. Attached hereto as Exhibit 27 is a true and accurate copy of a document Bates-labeled Ross 015361-015366, which Plaintiff produced during discovery in this action (December 8, 2006 email from David Hoffman to Ross attaching a draft Affiliation Agreement listing Ross and Caritas as the contracting parties).

30. Attached hereto as Exhibit 28 is a true and accurate copy of a document Bates-labeled Ross 015333-015340, which Plaintiff produced during discovery in this action (December 15, 2006 internal Ross email attaching a draft Affiliation Agreement with Ross and Caritas as the contracting parties).

31. Attached hereto as Exhibit 29 is a true and accurate copy of a document Bates-labeled Ross 015322-015329, which Plaintiff produced during discovery in this action

(December 17, 2006 internal Ross email attaching a draft Affiliation Agreement with Ross and Caritas as the contracting parties).

32. Attached hereto as Exhibit 30 is a true and accurate copy of a document Bates-labeled Ross 015297-015302, which Plaintiff produced during discovery in this action (December 19, 2006 email to Ross attaching a draft Affiliation Agreement with Ross and Caritas as the contracting parties).

33. Attached hereto as Exhibit 31 is a true and accurate copy of a document Bates-labeled Ross 015255-015261, which Plaintiff produced during discovery in this action (December 21, 2006 internal Ross email attaching a draft Affiliation Agreement with Ross and Caritas as the contracting parties).

34. Attached hereto as Exhibit 32 is a true and accurate copy of a document Bates-labeled Ross 015224-015246, which Plaintiff produced during discovery in this action (December 22, 2006 internal Ross email attaching two drafts of the Affiliation Agreement showing proposed changes dated December 21, 2006, and listing Ross and Caritas as the contracting parties).

35. Attached hereto as Exhibit 33 is a true and accurate copy of a document Bates-labeled Ross 015209-015223, which Plaintiff produced during discovery in this action (December 22, 2006 internal Ross email chain attaching a draft Affiliation Agreement with Ross and BQHC as the contracting parties).

36. Attached hereto as Exhibit 34 is a true and accurate copy of a document Bates-labeled Ross 0630-0643, which Plaintiff produced during discovery in this action and which was previously marked as Exhibit 19 at the July 1, 2011 deposition of Julius Romero (a December 22, 2006 email from Dr. Thomas Shepherd to Dominick Gio).

37. Attached hereto as Exhibit 35 is a true and accurate copy of a document Bates-labeled Ross 015144-015145, which Plaintiff produced during discovery in this action (email chain between Ross and BQHC, including a December 22, 2006 email from Julius Romero to Dr. Thomas Shepherd).

38. Attached hereto as Exhibit 36 is a true and accurate copy of a document Bates-labeled Ross 015152-015154, which Plaintiff produced during discovery in this action (December 22, 2006 email chain between and among Dr. Thomas Shepherd, Daniel Hamburger, and other Ross personnel).

39. Attached hereto as Exhibit 37 is a true and accurate copy of a document Bates-labeled Ross 015127-015140, which Plaintiff produced during discovery in this action (December 27, 2006 internal Ross email chain attaching a redlined draft of the Affiliation Agreement).

40. Attached hereto as Exhibit 38 is a true and accurate copy of a document Bates-labeled Ross 015124, which Plaintiff produced during discovery in this action (December 28, 2006 email from Julius Romero to Dr. Thomas Shepherd, responding to an email from Dr. Shepherd with an attached draft of the Affiliation Agreement).

41. Attached hereto as Exhibit 39 is a true and accurate copy of a document Bates-labeled Ross 015104-015115, which Plaintiff produced during discovery in this action (December 28, 2006 email from DeVry in-house counsel Virginia Smith, Esq. to BQHC attaching a finalized but not executed copy of the Affiliation Agreement).

42. Attached hereto as Exhibit 40 is a true and accurate copy of a document Bates-labeled Ross 0056-0067, which Plaintiff produced during discovery in this action and

which was previously marked as Exhibit 5 at the July 1, 2011 deposition of Julius Romero (December 28, 2006 Affiliation Agreement, signed by Ross and BQHC).

43. Attached hereto as Exhibit 41 is a true and accurate copy of a document Bates-labeled Ross 036437-036439, which Plaintiff produced during discovery in this action (chain of emails from December 28-29, 2006, including an email sent by Julius Romero to Ross on the evening of December 28, 2006, reporting that Ross's prepayment of clerkships pursuant to the Affiliation Agreement had been received).

44. Attached hereto as Exhibit 42 is a true and accurate copy of a document Bates-labeled Ross 0052-0055, which Plaintiff produced during discovery in this action and which was previously marked as Exhibit 6 at the July 1, 2011 deposition of Julius Romero (a December 5, 2007 document titled "Amendment to Affiliation Agreement...").

45. Attached hereto as Exhibit 43 is a true and accurate copy of a document Bates-labeled BQHC 42911-42917, which Defendants produced during discovery in this action and which was previously marked as Exhibit 7 at the July 1, 2011 deposition of Julius Romero (a February 28, 2008 document titled "Second Amendment to Affiliation Agreement...").

46. Attached hereto as Exhibit 44 is a true and accurate copy of a document Bates-labeled BQHC 03811-03818, which Defendants produced during discovery in this action (minutes from the March 12, 2007 Special Meeting of the Boards of Trustees of Wyckoff and Caritas).

47. Attached hereto as Exhibit 45 is a true and accurate copy of a document Bates-labeled BQHC 14000-14030, which Defendants produced during discovery in this action (Caritas's 2007 Form 990 federal tax return).

48. Attached hereto as Exhibit 46 is a true and accurate copy of a document Bates-labeled BQHC 04006-04071, which Defendants produced during discovery in this action (internal accounting logs showing financial obligations due to or from Wyckoff or Caritas to the other).

49. Attached hereto as Exhibit 47 is a true and accurate copy of the transcript from the deposition of Thomas Singleton, taken in this action on July 8, 2011.

50. Attached hereto as Exhibit 48 is a true and accurate copy of a document Bates-labeled BQHC 03873-03879, which Defendants produced during discovery in this action (minutes from the November 1, 2007 meeting of Wyckoff's Board of Trustees).

51. Attached hereto as Exhibit 49 is a true and accurate copy of a document Bates-labeled BQHC 03880-03894, which Defendants produced during discovery in this action (minutes from the December 20, 2007 meeting of Wyckoff's Board of Trustees).

52. Attached hereto as Exhibit 50 is a true and accurate copy of a document Bates-labeled BQHC 04072-04077, which Defendants produced during discovery in this action (March 2, 2007 email from Dominick Gio to various Wyckoff and New York Department of Health representatives).

53. Attached hereto as Exhibit 51 is a true and accurate copy of a document Bates-labeled Ross 008387-008389, which Plaintiff produced during discovery in this action (January 10-12, 2007 email conversation between Julius Romero and various Ross and DeVry personnel regarding Ross-BQHC Affiliation Agreement).

54. Attached hereto as Exhibit 52 is a true and accurate copy of a document Bates-labeled Ross 031414-031423, which Plaintiff produced during discovery in this action

(December 1, 2006 Promissory Note Agreement, executed by American University of the Caribbean N.V., BQHC, Caritas, and Wyckoff).

55. Attached hereto as Exhibit 53 is a true and accurate copy of the transcript from the deposition of John N. Kastanis, taken in this action on July 7, 2011.

56. Attached hereto as Exhibit 54 is a true and accurate copy of a document Bates-labeled Ross 035728-035729, which Plaintiff produced during discovery in this action (March 5, 2009 internal Ross email regarding Ross's decision not to file a proof of claim in Caritas's bankruptcy proceedings).

57. Attached hereto as Exhibit 55 is a true and accurate copy of a document Bates-labeled Ross 002827-002828, which Plaintiff produced during discovery in this action (October 7, 2009 DeVry memorandum prepared by Vice President & Controller Patrick Unzicker regarding Ross-BQHC Affiliation Agreement).

58. Attached hereto as Exhibit 56 is a true and accurate copy of Wyckoff's Responses and Objections to Plaintiff's Second Set of Interrogatories, served on or about May 24, 2011.

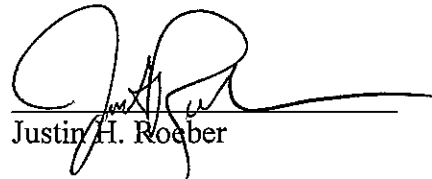
59. Attached hereto as Exhibit 57 is a true and accurate copy of the original Complaint that Ross filed in this action on or about April 6, 2009.

60. Attached hereto as Exhibit 58 is a true and accurate copy of the Amended Complaint that Ross filed in this action on or about August 20, 2009.

61. Attached hereto as Exhibit 59 is a true and accurate copy of Defendants' Answer to Ross's Second Amended Complaint, which Defendants filed in this action on or about October 6, 2009.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: December 2, 2011
New York, New York



Justin H. Roebber